

BOARD OF APPEALS CASE NO. 5273

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BEFORE THE

APPLICANT: Stephen T. Pieper

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit
commercial vehicle & equipment storage in the
AG District; south side of Troyer Road, White Hall**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/7/02 & 8/14/02

HEARING DATE: September 9, 2002

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Record: 8/9/02 & 8/16/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Stephen T. Pieper, is requesting a special exception, pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial vehicle and equipment storage in an AG/Agricultural District.

The subject property is located at 2913 Hunter Mill Road, White Hall, Maryland 21161 and is more particularly identified on Tax Map 22, Grid 4F, Parcel 8. The parcel consists of 125± acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

The Applicant, Mr. Stephen T. Pieper, appeared and testified that he owns the subject property which is currently engaged in active farming. The witness stated that he intends to construct a 50-foot by 200 foot building that, together with an existing 50 foot by 100 foot building, will house farm and commercial equipment. Currently he has a combine, dump trailer, 2 dump trucks, 3 tractors, a grain truck, a corn truck and an over the road truck. Currently all of this equipment, when not in use is stored within the existing building or a fenced area behind the building. The Applicant said he intends, in the future, to operate a commercial services company from the property. The Applicant denied that he would lease storage space for commercial vehicles but could not describe the type, size or number of commercial vehicles that he intends to store on the property. The witness did state that all vehicles and equipment could be stored inside the building and that was his intent. Mr. Pieper currently employs 1 full-time and 2 part-time employees. He would probably add one employee when he adds a commercial services operation.

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Mr. Anthony McClune, Manager, Division of Land Management represented the Department of Planning and Zoning. Mr. McClune testified that the Applicant could meet or exceed all of the particular requirements of the Code. The parcel is of sufficient size (125 acres), the equipment and vehicles will be completely screened from the view of neighboring property owners by virtue of being housed within two buildings, one existing and one proposed. Mr. McClune stated that such special exception uses were common in the AG district in Harford County and he did not think this special exception use at this location would have any impacts greater than or different than other similar special exception uses commonly found in the AG district. The Department recommends approval of the special exception.

Ms. Helen Chellis appeared in opposition to the request. Ms. Chellis owns property directly across from the Applicant's property on Troyer Road. Ms. Chellis was generally opposed to the special exception request but was somewhat vague regarding the reasons. She indicated that Troyer Road was very busy and described the road as a "raceway". There were also some assertions regarding the possibility of the Applicant going in to the business of nutrient management but, upon cross-examination by Ms. Chellis, the Applicant denied that.

CONCLUSION:

The Applicant, Stephen T. Pieper, is requesting a special exception, pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial vehicle and equipment storage in an AG/Agricultural District.

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Harford County Code Section 267-53D(1) provides:

“Motor vehicle and related services.

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:**
 - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
 - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
 - (c) A minimum parcel area of two (2) acres shall be provided.”**

Section 267-52 of the Harford County Code provides as follows:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

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The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony that will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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The Hearing Examiner, guided by the Court of Appeals is charged with a two step process of fact finding. First, there must be a finding that the particular use proposed is within the allowable special exception use as defined by the Code. In this case, the Hearing Examiner concludes that the Applicant can meet all of the specific requirements of Section 267-53D(1). The parcel exceeds 2 acres (125 acres present) and all equipment and vehicles will be stored inside one of two buildings located on the property. The Applicant did not indicate that equipment sales were contemplated as an accessory use.

But those findings alone do not end the inquiry. As the Schultz court pointed out, the Applicant has the burden of proving that his use would not have an adverse impact on the neighboring properties different than or greater than a similar use regardless of its location within the AG zone. In the opinion of the Hearing Examiner, this the Applicant failed to do. The Applicant currently has a number of pieces of farm equipment that he stores in a building for use in the farming operation already existing on the property. But that is not the issue or basis of the request. The Applicant stated that he would like to operate a commercial services operation on the property in the future. He was unable, however, to describe the type, number, size or configuration of any proposed vehicles. Special Exceptions are not intended to be blanket approvals of future unspecified uses but rather, require the hearing Examiner and the Board to inquire into the details of the use in order to evaluate the impacts of the use and determine if this is a use not permitted because of unusual impacts not generally associated with a similar use.

The Hearing Examiner is cognizant also of the provisions of Section 267-9I that must be considered in evaluating the grant of a special exception the provisions of 267-9I are as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

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- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.”**

Without any detail regarding the proposed use other than a vague reference to a commercial services operation, the Hearing Examiner is unable to discern potential impacts regarding such things as noise, traffic, road conditions, dust, number of persons working on the parcel, traffic in and out of property, hours of operation or any other potential impacts of the proposed operation.

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As this Hearing Examiner pointed out in Board of Appeals Case Nos. 4045 and 4110, (application of T.C. Simons Corporation), it is not for the Hearing Examiner or the Board to conjure or guess in matters of approvals of special exception uses. To the contrary, it is the Applicant's burden to present sufficient facts regarding the proposed use that will allow the Hearing Examiner and the Board to ascertain the level and type of impact associated with the proposed use. In the case at hand, the Applicant has proposed only a future use without describing any of the details of that use with sufficient specificity to allow the Hearing Examiner to evaluate potential impacts.

Under the circumstances, the Hearing Examiner has insufficient factual testimony from which a conclusion regarding impacts could be reached. Based on the failure of the Applicant to meet his burden of presenting sufficient factual testimony to support his request, the Hearing Examiner must recommend denial of the requested special exception use.

Date SEPTEMBER 9, 2002

William F. Casey
Zoning Hearing Examiner